

Rahajeng (Migration) [2018] AATA 492 (4 January 2018)

DECISION RECORD

DIVISION:	Migration & Refugee Division
APPLICANTS:	Ms Sophie Diella Rahajeng Miss Mayu Toyama
CASE NUMBER:	1611249
DIBP REFERENCE(S):	CLF2014/111909
MEMBER:	Robert Wilson
DATE:	4 January 2018
PLACE OF DECISION:	Sydney
DECISION:	The Tribunal remits the applications for Partner (Temporary) (Class UK) visas, with the direction that the first named applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa: • cl.820.211(2) of Schedule 2 to the Regulations • cl.820.221 of Schedule 2 to the Regulations. • As the Tribunal is remitting the first visa applicant, the Tribunal is remitting all visa applicants to be assessed in full.

Statement made on 04 January 2018 at 9:58am

CATCHWORDS

Migration – Partner (Temporary)(Class UK) visa – Subclass 820 (Partner (Temporary)) – Extensive detailed oral and written evidence provided in support – Mutual commitment to shared life – Genuine and continuing – Live together on a permanent basis – Parties in married relationship – Applicant is spouse of person who sponsored her

LEGISLATION

Migration Act 1958, ss 5CB, 5F, 5F(2)(a)-(d), 65

Migration Regulations 1994, Schedule 2, cl 820.211(2), 820.211(2)(a), 820.211(2)(c), 820.211(2B), 820.221, r 1.15A(3)

STATEMENT OF DECISION AND REASONS

APPLICATION FOR REVIEW

1. This is an application for review of a decision of a delegate of the Minister for Immigration on 8 July 2016 to refuse to grant the applicants Partner (Temporary) (Class UK) visas under s.65 of the *Migration Act 1958* (the Act).
2. The first named applicant (the applicant) applied for the visa on 11 August 2014 on the basis of her relationship with her sponsor. At that time, Class UK contained only one subclass: Subclass 820 (Partner (Temporary)). The criteria for the grant of this visa are set out in Part 820 of Schedule 2 to the Migration Regulations 1994 (the Regulations). The primary criteria must be satisfied by at least one applicant. Other members of the family unit, if any, who are applicants for the visa need satisfy only the secondary criteria.
3. The delegate refused to grant the visa on the basis that the visa applicant did not satisfy cl.820.211(2)(a) because the applicant was not the spouse or de facto partner of his sponsor as defined under section 5F or 5CB of the Act.
4. The applicants appeared before the Tribunal on 30 November 2017 to give evidence and present arguments. The Tribunal also received oral evidence from the sponsor, Mr Shane Mark Edwards.
5. The applicants were represented in relation to the review by their registered migration agent. The representative attended the Tribunal hearing.
6. For the following reasons, the Tribunal has concluded that the matter should be remitted for reconsideration.

CONSIDERATION OF CLAIMS AND EVIDENCE

7. The issue in the present case is whether the applicant is the spouse of her sponsor.

WHETHER THE PARTIES ARE IN A SPOUSE OR DE FACTO RELATIONSHIP

8. Clauses 820.211(2)(a) and 820.221 require that at the time the visa application was made, and at the time of this decision, the applicant is the spouse or de facto partner of an Australian citizen or Australian permanent resident or an eligible New Zealand citizen. In the present case the applicant claims to be the spouse of the sponsor who is an Australian citizen.
9. 'Spouse' is defined in s.5F of the Act and provides that a person is the spouse of another where the two persons are in a married relationship. Persons in a married relationship must be married to each other under a marriage that is valid for the purposes of the Act, there must be a mutual commitment to a shared life as a married couple to the exclusion of all others, the relationship must be genuine and continuing, and the couple must live together, or not live separately and apart on a permanent basis: s.5F(2)(a)-(d). In forming an opinion about these matters, regard must be had to all of the circumstances of the relationship. This includes evidence of the financial and social aspects and the nature of the parties' household and their commitment to each other as set out in r.1.15A(3), which is extracted in the attachment to this decision.

ARE THE PARTIES VALIDLY MARRIED?

10. If the parties are validly married, they may meet the requirements of a spousal relationship, but not a de facto relationship.
11. The applicant and the sponsor provided a Marriage Certificate to the Department as referred to in the Department's decision. They were married on 15 April 2013.
12. On the evidence, the parties were married to each other under a marriage that is valid for the purposes of the Act as required by s.5F(2)(a).

ARE THE OTHER REQUIREMENTS FOR A SPOUSAL RELATIONSHIP MET?

13. ***Regulation 1.15A***

14. (a) The financial aspects of the relationship

15. *(i) any joint ownership of real estate or other major assets;*

16. The sponsor said at the Tribunal hearing that they have a car, which they paid for together equally from their joint account in the sum of \$3000.
17. They plan to build a place in Indonesia. He is saving money to do so. They are putting plans together. Foundations have been set up. The plan will eventually be to go from one house in Indonesia to another in Australia.
18. The applicant indicated at the Tribunal hearing that they have a lease on a unit at Aralia Street, Nightcliff, Darwin, Northern Territory.
19. They also have a joint bank account with NAB. The sponsor puts money into that account, and the wife uses it for household daily expenses. The applicant works as a cleaner and earns \$700 per fortnight. The sponsor works in security for a company. He earns from \$500-\$600 a week, but up to \$1400 a week, especially over Christmas.
20. The applicant and sponsor have purchased together two televisions, a sofa, some of which were purchased second-hand. They also bought furniture for the bedroom, some of which is second-hand. They have one fridge.
21. *(ii) any joint liabilities;*
22. Their rent on the unit is \$700 a fortnight.
23. *(iii) the extent of any pooling of financial resources, especially in relation to major financial commitments;*
24. They paid equally for the purchase of the car and the household furniture. They use their joint bank account.
25. *(iv) whether one person in the relationship owes any legal obligation in respect of the other;*
26. Both the applicant and the sponsor have superannuation. She does with the firm HOST PLUS, and the sponsor has been nominated as her beneficiary.

27. The sponsor has three superannuation policies. They are HOST PLUS, Australian Super, and one other, possibly referred to as ALM. He has nominated the applicant, his younger son from his first marriage, and the applicant's daughter as the beneficiaries.
28. The applicant has a will, as does the sponsor.
29. Neither of them have a life assurance policy.
30. *(v) the basis of any sharing of day to day household expenses;*
31. They go shopping and to restaurants together. The sponsor pays for meals at restaurants, because he likes to do it. Sometimes they go with her daughter and a friend. Both the applicant and the sponsor pay for the groceries.
32. The Tribunal gives weight to the evidence above.
33. (b) the nature of the household
34. *(i) any joint responsibility for the care and support of children;*
35. The applicant and the sponsor share the responsibility for supporting the applicant's daughter, May Toyama, born: 12 August 2006. The sponsor sends money to Indonesia to the applicant's parents and to her daughter, May Toyama, from a previous marriage, who is attending school. The applicant/mother has been given custody. The marriage was legally dissolved by divorce on 1 June 2012. The applicant also looks after her parents.
36. The applicant and the sponsor pay for the daughter's clothing including her school uniforms and whatever else she might need.
37. The sponsor takes her to school after giving her breakfast. The school is close to their unit, it is only a five minute walk. He also takes her to dance performance, and the school concert.
38. The Tribunal took evidence from the daughter, Mayu, at the hearing at which time she was 11 years of age, and was in year five. She wears her school uniform which her mother bought for her. Her mother makes her school lunch. She stated that the applicant and sponsor take her on holidays during the vacation. She goes back to Indonesia occasionally. Sometimes she gets pocket money. She has a party for her birthday and her friends come over.
39. She wants to be a doctor when she grows up.
40. *(ii) the living arrangements of the persons*
41. The unit has two bedrooms, and the applicant and the sponsor sleep in one room, and the daughter sleeps in the other. The applicant and the sponsor agreed that there is also a bathroom, kitchen, lounge room, veranda, laundry and a car space.
42. The applicant rises at 7 AM and is at work by 8 AM. She gets home at 2 PM. She does cleaning. Sometimes she will walk to the school with her daughter.
43. The daughter wakes up at 7 AM and gets home from school at 2:45 PM
44. The sponsor works night shift and he gets home at 3 AM and goes to work at 9 PM or 8 PM.

45. *(iii) any sharing of the responsibility for housework*
46. The sponsor and share the washing. He cleans the house. Both the applicant and the sponsor do the cooking. The applicant likes Indonesian food. The daughter puts the garbage out. The sponsor is good at fixing amending things in the house. He also gets petrol for the car and sometimes she does. The applicant does the ironing. The sponsor also washes the dishes and vacuums.
47. The Tribunal gives weight to the evidence above.
48. The social aspects of the relationship
49. *(i) whether the persons represent themselves to other people as being married to each other;*
50. The applicant introduces persons to her partner as her husband, Shane. The sponsor introduces persons to his partner, as his wife, Sophie
51. *(ii) the opinion of the persons' friends and acquaintances about the nature of the relationship;*
52. David F McCormack provided a statutory declaration declared on 14 July 2014 with a typed statement annexed; stating that he has known the sponsor since he commenced working for him in August 2010. The sponsor and the witness have become very good friends and the working relationship progressed as social friends.
53. The witness stated that the sponsor went to Bali in December 2011 for a holiday with a couple of their work colleagues and there he met the applicant. On his return the sponsor told the witness about the applicant. He told him that he had met a wonderful woman and that he wanted to keep seeing her. The sponsor then continued going to Bali at every opportunity (4 weekly) until he convinced the witness to go with him. The witness went on 2 February 2012 where he met the applicant for the first time.
54. The applicant and the witness became good friends also and she was included in their social circle. The applicant's first trip to Australia in March only strengthened the social relationship between the sponsor the applicant and the rest of them. The witness returned to Bali on July that year and she was introduced to the applicant's brother and sister as they were really now considered part of the sponsor's family.
55. The sponsor by this time was telling the witness that he wanted to marry the applicant as she was the woman for him. The applicant and the sponsor have stayed with the witness many times out in Howard Springs and in fact the applicant was instrumental in the witness meeting his fiancée, Jo, and they became good friends also. The sponsor married the applicant in April 2013 and she has had Shane's children become part of their family unit also. The sponsor's son, Sam, has resided with the sponsor in Darwin and the applicant has bonded with him as one of his caregivers.
56. The witness believes that this is a lasting and true relationship and will continue to value the friendship of both the sponsor and the applicant. Their marriage appears, to the witness, to be a very loving and happy one that will last through good and bad for many years to come.
57. Mr David Francis McCormack provided a further statutory declaration declared on 13 December 2015.

58. He wrote that he worked with the sponsor in Immigration Detention for approximately five years. He met the applicant about a year later when he accompanied the sponsor to Indonesia as the sponsor wanted to introduce her to the witness. The witness wrote that they are still his very good friends and he sees them regularly, at the very least monthly. Their daughter (Sophie's from a prior marriage), Mayu, joined them in Australia in approximately July 2015 and is devoted to her new father.
59. The witness wrote that he believes this is a genuine and continuing relationship. In fact he knows it is. They are both good friends and the witness is aware of their true intentions to remain both married and happy.
60. Richard Phillip Benson provided a statutory declaration declared on 7 July 2014 with a typed statement annexed; stating that he was with the sponsor in December 2011 when they went to Bali for some relaxation on their rostered days off. On the first flight they went out. During this night the sponsor met the applicant. During the days that followed the applicant spent a lot of time with the sponsor and the witness as there are unofficial tour guide and shopping advisor. It was clear that the sponsor and the applicant were quickly forming a bond.
61. On the return to Australia the sponsor mentioned how much she thought of the applicant and he would not mind spending more time with her to get to know her better.
62. On several occasions sponsor returned to Bali to see the applicant. On his return from these trips the sponsor told the witness he was strongly attracted to the applicant and on one particular occasion the witness recalled him telling the witness that he thought he would like to marry her.
63. The sponsor has also brought the applicant to Australia for holidays and they met with them for dinner and drinks on several occasions. The sponsor took the opportunity to introduce the applicant to friends and workmates while she was here.
64. In return, the applicant took the sponsor to meet her family in Indonesia.
65. As time progressed the sponsor and the applicant have formed a strong bond and the sponsor's prediction of marrying Sophie came true.
66. The witness wrote that it was good to see a good friend and colleague find happiness with his new love. Every time the applicant comes to Australia they all get together for a meal and drinks. The applicant is well accepted as the sponsor's wife in their social group.
67. The witness has no doubt that this is a genuine and loving relationship for them both.
68. *(iii) any basis on which the persons plan and undertake joint social activities;*
69. The applicant indicated that if she has been invited out, she asks the sponsor if he has time to attend the social function with her.
70. The sponsor indicated that if there was a barbecue at a friend's place he will go but he will discuss it with the applicant first. This is because sometimes they may be working on the weekend.
71. Mayu, the daughter, provided a Christmas card for the sponsor (Dad). Jo and partner sent a Christmas card to the applicant and sponsor. The sponsor was the best man at a friend's wedding.

72. **The couple's plans:** include having one house in Indonesia and one in Australia. Further, the couple want to have children together. They want to see the children grow up. He wants to have a boy. He wants to have a good family. They have dreams to see their children and grandchildren grow up and have a future. Would be nice to travel together and watch their daughter grow up.
73. The Tribunal gives weight to the evidence above.
74. (d) the nature of the persons commitment to each other
75. *(i) The duration of the relationship*
76. Mr Shane Edwards, the sponsor, provided a typed statement. He wrote that he first met the applicant on 10 December 2011 whilst on holiday in Bali. The circumstances in which they met are as follow.
77. On the first night of their holiday, Richard Benson, his friend, and the sponsor went out for a meal.
78. After their meal they decided to have a few drinks and look around Kuta as the night was still young.
79. They stopped outside a venue in Legian Street, and this is when he first saw the applicant as she walked along the street past where they were standing. As she passed them, she stopped to speak to a friend. The sponsor looked at her and she smiled so he said hello and she smiled and started speaking to him in fluent English. They talk for a few minutes, then the sponsor asked her she could show him around. She told him that she was on her way home and she was not dressed to go out. They sat down and talked for another hour or so, and agreed to meet the next day, which they did.
80. They spent every day together for the duration of his holiday, sightseeing, shopping and enjoying each other's company. During this time they became very close. They discussed how they felt about each other, and the sponsor decided that he would return to Bali three weeks later.
81. He returned to Australia, and for the next three weeks they spoke every day via telephone and Skype.
82. The sponsor returned to Bali as planned and the applicant met him at the airport.
83. It was during this time that they decided to begin a committed relationship with each other.
84. The sponsor returned to Bali many times during the following months, during which time he got to know the applicant's family.
85. The sponsor then brought the applicant to Australia to meet his family.
86. *(ii) The length of time during which the persons have lived together*
87. The applicant wrote that in March 2012 the sponsor came to Java to meet the applicant's family and asked her parents if he could marry her. Her parents accepted the sponsor and planning for the wedding began.

88. On 10 December 2012, exactly 12 months from the day they met, they were engaged.
89. On 15 April 2013 they were married.
90. Since then the applicant has spent the majority of her time here in Australia on a Multi-Entry visa at their home at Karama (at the time) in the Northern Territory.
91. The Tribunal gives weight to the evidence above.
92. *(iii) the degree of companionship and emotional support that the persons draw from each other;*
93. If the sponsor comes home and looks terrible, the applicant can tell as soon as he walks through the door. She massages him. She looks after him like a baby. The sponsor said that the applicant can tell if he is not and 100 per cent. She is his rock. She holds him together when he falls apart.
94. On the other hand, if she looks sad, he asks if she is okay. He can tell as soon as she walks through the door. He cuddles her and kisses her. He sits with her and finds out what is wrong.
95. *(iv) whether the persons see the relationship as a long-term one;*
96. Both the applicant and the sponsor see their relationship as being long-term.
97. The Tribunal gives weight to the evidence above.
98. **FINDINGS**
99. The Tribunal finds that the applicant and the sponsor married on 15 April 2013.
100. The Tribunal finds from all the evidence, the parties are married to each other under a marriage which is valid for the purposes of the Act, and therefore at the time of application and time of decision the parties meet s.5F(2)(a).
101. The Tribunal is satisfied that at the time of application and the time of decision, the applicant and the sponsoring partner have a mutual commitment to a shared life as husband and wife to the exclusion of all others. The Tribunal is satisfied that the relationship is genuine and continuing. Therefore the requirements of s.5F(2)(b) and s.5F(2)(c) have been met.
102. Additionally, the Tribunal is satisfied that at the time of application and time of decision the applicant and the sponsoring partner live together on a permanent basis. Accordingly, they meet the requirements of s.5F(2)(d) for a married relationship.
103. For these reasons the Tribunal finds that at the time of application and time of decision the applicant and the sponsoring partner are in a married relationship within the meaning of s.5F(2) and therefore satisfy the definition of 'spouse' contained in s.5F of the Act.
104. The Tribunal is satisfied that at the time of application the applicant was the spouse of the person who is an Australian citizen, and that the applicant was sponsored by that person. The Tribunal finds that there is no evidence before it which indicates that the sponsor was prohibited from being a sponsoring partner under cl.820.211(2B).

105. Accordingly the applicant meets the requirements of cl.820.211(2)(a) and (c).
106. For these reasons, the Tribunal is satisfied that at the time of application the applicant meets the requirements of cl.820.211(2).
107. Further, as the applicant continues to meet the criteria in cl.820.211(2), the applicant therefore also meets cl.820.221 at the time of decision.
108. Therefore, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a subclass 820 visa.
109. Given the findings above, the appropriate course is to remit the application for the visa to the Minister to consider the remaining criteria for a Subclass 820 visa.

110. **DECISION**

111. The Tribunal remits the application for a Partner (Temporary) (Class UK) visa, with the direction that the applicant meets the following criteria for a Subclass 820 (Partner (Temporary)) visa:

- cl.820.211(2) of Schedule 2 to the Regulations
- cl.820.221 of Schedule 2 to the Regulations.

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113. Robert Wilson

114. Member

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ATTACHMENT - EXTRACT FROM MIGRATION REGULATIONS 1994

1.15A SPOUSE

- (1) For subsection 5F (3) of the Act, this regulation sets out arrangements for the purpose of determining whether 1 or more of the conditions in paragraphs 5F (2) (a), (b), (c) and (d) of the Act exist.
- (2) If the Minister is considering an application for:
 - (a) a Partner (Migrant) (Class BC) visa; or
 - (b) a Partner (Provisional) (Class UF) visa; or
 - (c) a Partner (Residence) (Class BS) visa; or
 - (d) a Partner (Temporary) (Class UK) visa;

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

- (3) The matters for subregulation (2) are:
 - (a) the financial aspects of the relationship, including:
 - (i) any joint ownership of real estate or other major assets; and
 - (ii) any joint liabilities; and
 - (iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and
 - (iv) whether one person in the relationship owes any legal obligation in respect of the other; and
 - (v) the basis of any sharing of day to day household expenses; and
 - (b) the nature of the household, including:
 - (i) any joint responsibility for the care and support of children; and
 - (ii) the living arrangements of the persons; and
 - (iii) any sharing of the responsibility for housework; and
 - (c) the social aspects of the relationship, including:
 - (i) whether the persons represent themselves to other people as being married to each other; and
 - (ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - (iii) any basis on which the persons plan and undertake joint social activities; and
 - (d) the nature of the persons' commitment to each other, including:

- (i) the duration of the relationship; and
 - (ii) the length of time during which the persons have lived together; and
 - (iii) the degree of companionship and emotional support that the persons draw from each other; and
 - (iv) whether the persons see the relationship as a long term one.
- (4) If the Minister is considering an application for a visa of a class other than a class mentioned in subregulation (2), the Minister may consider any of the circumstances mentioned in subregulation (3).